IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1053 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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YUGALKISHOR MOHARSINH RAJPUT
Versus
STATE OF GUJARAT

Appearance:
MR MJ BUDDHBHATTI for Appellant
MR KT DAVE, APP for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE B.C.PATEL)

#. Appellant being aggrieved by an order of conviction

recorded by the Additional Sessions Judge, Junagadh in Sessions Case No. 61/95 on 30.9.95, convicting him for an offence punishable under Section 20 of Narcotic Drugs & Psychotropic Substances Act (hereinafter to be referred to as "the NDPS Act") and sentencing him for 10 years of rigorous imprisonment and fine of Rs. 1.00 lac (and in default of payment of payment of fine, further rigorous imprisonment for 2 years), has preferred this appeal. The short facts as they emerge from the record are as under.

#. Kishorsinh Amarsinh Jadeja - PW 9 on 25.11.94 was patrolling with the police staff and at about 19.45 hrs., a car bearing no. GTE 1819, Ambassador Make was found going towards Una from Veraval on Veraval-Una road. The said car was being driven by accused no. 1. For the purpose of checking, the complainant gave a signal to stop the car, however, as the car did not stop, the police followed the said car in Govt. vehicle. The accused no. 1 and the accused no. 2 - appellant herein were trying to run away from the vehicle. But the police officer caught hold of them and on search of a suitcase, key of which was given by accused no. 2, 1550 gram prohibited Charas without pass or permit and a sum of Rs. 30,000/- were found. Before taking search, Noor Mohammed Ismail Ghanchi and Aamad Dada Ghanchi were called as Panchas and were informed about the search of the person of the accused persons. The accused persons were asked to take search of the complainant and the Panchas, to which they refused. From the search of the person of accused no. 1, a sum of Rs. 5/- was recovered. Appellant-accused no. 2 was occupying the rear seat in the said car. On the search of his person, a sum of Rs.50/- was recovered. In the rear seat, there was a gray colour Odyssey VIP suitcase which was locked. On demand of the keys, the appellant Jugal Kishor gave the key, on which, his name was written. There was photograph of the accused no. 2. With the key given by accused no. 2 pasted on the keychain, the appellant herein. The suitcase was opened with the said key and the sum of Rs. 30,000/- was recovered. One diary was also found from the suitcase. In the suitcase, there was one plastic bag containing small plastic packets of different sizes. Upon smelling, it was found to be Charas for which accused no. 2 - the appellant herein had no pass or permit. In view of the quantity, Police Constable Bhikhubhai was sent for bringing three jars and Police Constable Virambhai was sent to call goldsmith for weighing the contraband. Even Executive Magistrate Shri Joshi was called to remain present. Charas was divided and packed in to three jars. Slips bearing the

signatures of the Panchas, complainant, accused persons and Executive Magistrate were affixed on the mouth of the jars and the jars were sealed with the seal of P.S.I. Prabhas Patan. The amount, suitcase, contraband articles and the car were seized under the panchnama exh. 18. It is on these facts that information exh. 34 was lodged with the police station. On completion of investigation, chargesheet was filed against both the accused. Vide exh. 2 charge was framed, to which, the accused persons pleaded not guilty and claimed to be tried.

#. On appreciation of oral as well as documentary evidence and considering the submissions made by the learned counsel for the accused as well as for the State, statements of the accused under Section 313 of Code of Criminal Procedure, the trial court acquitted the original accused no.1, who was driving the car, but convicted the appellant - original accused no. 2. It is against this judgment that the appellant has preferred the present appeal.

#. Mr. K.T. Dave, learned APP submitted that the accused is absconding and therefore, the appeal should not be heard. However, as the matter is pending since long, we thought it fit to dispose of the matter and heard the learned advocate Mr. Buddhabhatti, appearing for the accused. Mr. Buddhabhatti drew our attention to the evidence of Kishorsinh Jadeja - PW 9, who was leading the patrolling party and submitted that he was not an authorised officer as contemplated under Section 41 of the NDPS Act and therefore, he was not authorised to investigate the case. Mr. Buddhabhatti submitted that in view of the decision of the Apex Court in case of Abdul Rashid Ibrahim Mansuri v. State of Gujarat [AIR 2000 SC 821] and in the case of Roy V.D. v. State of Kerala [AIR 2001 SC 137], the appellant should be acquitted.

#. From the evidence of the said officer PW 9, it transpires that he was in patrolling with the Head Constable G.G. Raval, Constable Bhikhubhai and Constable Viram Govind. They reached the old bus stand, at Prabhas Patan at about 19.45 hrs. where they were checking the vehicles. There they saw one gray car of Ambassador make, moving towards Una. Despite the signal was given to stop the car, the car did not stop and therefore, in the government vehicle they followed the car which took a turn towards Somnath. Thereafter they raised speed ofthe vehicle and within a short distance they picked up the car and driver of the car who is accused no. 1 and the accused no. 2 appellant herein were nabbed. Hence, both

were stopped on suspicion. Police called Noor Mohammed Ismail & Aamad who were passing on the road and requested them to render their services as Panchas. The Panchas were informed about the suspicious behaviour of the accused persons. The accused persons were asked to take search of the police officers as well as the two Panchas, but they refused. The person who was driving the car disclosed his name as Ramesh Bhagvanji, resident of Rajasthan. So far as the person occupying rear seat in the car is concerned, he disclosed his name as Jugal Kishor Thakur, resident of Himachal. On the search of his person, Rs. 50/- were recovered. There was a gray colour Odyssey VIP suitcase on the rear seat ofthe car. The appellant handed over the key of the said suitcase. Name and photograph of the accused were found on the key-chain. The suitcase was opened with the aid of the key. In the suitcase, a sum of Rs. 30,000/-, a diary of 1994 bearing the name of the appellant and plastic bag were found. On opening the plastic bag, small plastic packets containing Charas were found therein. As the accused persons did not have pass or permit to keep the same, police called for jars and also Goldsmith for weighing the contraband. Contraband was divided in three parts. Two parts each of 25 grams, one for forwarding sample to Chemical Analyser and the other as a control sample. Each sample was kept in the plastic bag which was put in a plastic jar. Remaining quantity was stored in a glass jar. The three containers were effectively sealed by affixing the slips bearing signatures of the panchas, the accused, the police officer and the gazetted officer. On the slips, the seal of P.S.I., Prabhas Patan was affixed. Thus, three jars were effectively sealed. One plastic container was forwarded to the Forensic Science Laboratory for opinion. The opinion received from the Forensic Science Laboratory is placed on the record vide exh. 37. On examination of the article, opinion was given which has not been challenged by the accused in the cross-examination. There is evidence of Police Constable Virambhai Govindbhai Exh. 8, Goldsmith Pundliklal Girdharlal Soni - Exh. 9 and Executive Magistrate exh. 20. There is evidence of Police Station Officer Kailas Babu Himmatlal Exh. 23 who has recorded the FIR. No doubt, Executive Magistrate Shri Joshi and the Goldsmith were not present at the initial stage but they have witnessed the weighing ofthe muddamal article and sealing process. Panch Shri Noor Mohammed Ismail has not supported the prosecution. Panch Aamad Dadabhai Exh. 19 has also not supported the prosecution.

#. In the instant case, the police officer has seized certain other material namely bill Exh. 11, telephone

bill Exh. 12, hotel bills Exhs. 13, 14 and 15, abstract of hotel register Exh. 16 to indicate that the accused was in the vicinity. Looking to the contents of the contraband weighing about 1550 grams and the sum of Rs. 30,000/-, planting is out of question and even not suggested. Mr. Buddhbhatti however submitted that in the instant case, no information has been submitted to the higher officer as contemplated under Section 57. According to Mr. Buddhabhatti, on arrest or seizure under the NDPS Act, the police officer was required to make full report of the particulars to his immediate official/superior within 48 hours. According to him, there is no satisfactory evidence to establish this fact.

#. The police officer in his evidence has specifically stated that after registering the offence on 25.11.94, information was conveyed through wireless message to D.S.P., Divisional Police Officer, Circle Police Inspector, P.S.I. Central Excise and Sub Divisional Magistrate. Thus, all superior officers were informed in this behalf. This aspect is not challenged in the cross-examination. The evidence also makes it clear that the accused were arrested and the complaint was lodged at the police station. From the evidence it is clear that thereafter information was conveyed to the superior officers and therefore, there is compliance of Section 57 of the NDPS Act. It is also required to be noted that the Police Station Officer has noted all these details at Exh. 25. Reading the contents of Exh. 25, it is clear that all necessary details were mentioned therein which were perused by the Police Inspector, Prabhas Patan, who is the superior officer. That report Exh. 25 also clearly indicates that the superior officers were informed by VHF message in this behalf. Thus, there is sufficient evidence to show that there is compliance of Section 57 of the NDPS Act.

#. Mr. Buddhbhatti further submitted that there is breach of Section 41 of the NDPS Act as the police officer was not authorised. It is required to be noted that in Sub-Section (1) of Section 41 of the NDPS Act, it is provided that if an officer has reason to believe from personal knowledge or information given by any person and that has been taken in writing that any person has committed an offence punishable under Chapter IV or any document or other article which may furnish evidence of the commission of such offence has been kept or concealed in a building, conveyance or place, then in such situation, such officer may authorise any officer subordinate to him but superior in rank to a peon, sepoy or constable, to arrest such a person or search a

building, conveyance or place whether by day or by night or himself arrest a person or search a building conveyance or place. In the instant case, it is clear that there was no prior information with the police officer but members of the patrolling party were merely patrolling and on suspicion, search was conducted. Therefore, Section 41 would not come into picture.

#. In view of this, we do not find any merits in the contentions raised by the learned counsel appearing for the appellant. The appeal, therefore is dismissed and the judgment recorded by the Additional Sessions Judge, Junagadh in Sessions Case No. 61/95 is hereby confirmed.

[B.C. PATEL, J.] [A.L. DAVE, J.]

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